IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7367 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPSING MULUBHAI PARMAR

Versus

DIST COLLECTOR

Appearance:

MR PM BHATT for Petitioner

MR AJ DESAI, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 11/02/2000

ORAL JUDGEMENT

By means of filing this petition under Articles 226 and 227 of the Constitution, the petitioner has prayed to quash and set aside the order dated October 16, 1986, passed by the District Collector, Ahmedabad,

rejecting the claim of the petitioner to exchange Survey No.1671 admeasuring 4 acres 22 gunthas situated in village Gangad, Taluka Dholka, District Ahmedabad, for Survey No.1514 situated in the same village and admeasuring 8 acres 26 gunthas as well as the order dated June 30, 1988 passed by the State of Gujarat upholding the order of the Collector.

2 The petitioner is owner of land bearing survey no.1671 admeasuring 4 acres 22 gunthas situated in village Gangad, Taluka Dholka, District Ahmedabad. The petitioner wanted Survey No.1514 admeasuring 8 acres 26 gunthas situated in the same village in exchange of his land bearing Survey No.1671. Therefore, he made an application dated October 6, 1983, requesting the District Collector, Ahmedabad, to give Survey No.1514 in exchange of Survey No.1671. The Collector found that

such exchange of land was not authorised by law and rejected the application made by the petitioner vide order dated October 16, 1986. Feeling aggrieved by the said order the petitioner preferred revision application before the State Government which was also rejected by the order dated June 30, 1988, giving rise to the present petition.

3 Mr P.M.Bhatt, learned counsel for the petitioner, submitted that before passing the order the Collector had not issued any notice to the petitioner and therefore the petition should be accepted. It was claimed that other residents of the same village are given land in exchange and therefore the demand of exchange of the petitioner being reasonable, should have been accepted by the competent authority. What was stressed was that there is enough gauchar land available in village Gagad and therefore prayer made by the petitioner for exchange of his land for Survey No.1514 should be accepted by setting aside the impugned orders.

4 Mr A.J.Desai, learned Asst. Government Pleader, contended that there is no provision under which the land belonging to a resident of village can be exchanged for the land belonging to the Panchayat and therefore the Collector was justified in rejecting the claim advanced by the petitioner for exchange of his land for Survey No.1514 belonging to the panchayat. Learned counsel for the respondent stressed that on cogent grounds the claim advanced by the petitioner for exchange of the lands is rejected by the authorities and therefore the petition should be dismissed.

5 I have heard the learned counsel for the parties and taken into consideration the documents which are produced along with the petition. In the application dated October 16, 1983, it was specific case of the petitioner that the land bearing survey no.1514 belonging to the panchayat should be given to him in exchange of his land bearing survey no.1671. Though in the petition it is claimed that such exchange is permissible under Section 60 of the Bombay Land Revenue Code, 1879, the said provision does not deal with exchange of lands at all. It provides that any person desirous of taking unoccupied land which has not been alienated must previously to entering upon occupation obtain the permission of the Mamlatdar or the Mahalkari. The claim of the exchange of the lands advanced by the petitioner is not supported by any other provision of Bombay Land Revenue Code. Therefore, in my view, the Collector was justified in rejecting the prayer made by the petitioner for exchanging his land for Survey No.1514 belonging to the gram panchayat. The revenue record produced by the petitioner pertaining to Survey No.1514 which belongs to gram panchayat indicates that the said land is designated as gauchar land and is being used for grazing cattle. Therefore, the revisional authority was also justified in holding that without following the due procedure of law extent of gauchar land cannot be reduced. Under Section 62 of the Bombay Land Revenue Code it is lawful for the Collector subject to such rules as might have been made by the State Government to require the payment of a price for unalienated land or to sell the same by auction subject to certain conditions and therefore instead of requesting the Collector to give Survey No.1514 in exchange of Survey No.1671, the petitioner could have demanded Survey No.1514 by sale or otherwise. It is needless to say that when the property belonging to the panchayat is to be sold or transferred, prior permission of the competent authority is required to be obtained, as contemplated by the relevant provisions of the Gujarat Panchayat Act, 1993. However, claim for exchange of land having no legal basis cannot be entertained and no direction can be issued to the respondents to giver Survey No.114 belonging to village Gagad in exchange of land bearing Survey No.1671 which belongs to the petitioner. Under the circumstances, I am of the opinion that the petition cannot allowed and is liable to be dismissed.

6. For the foregoing reasons the petition fails and is dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier is hereby

vacated. However, it is clarified that it would be open to the petitioner to make an appropriate application for sale of Survey No.1514 belonging to village Gagad to him and if such an application is made, the same shall be considered in accordance with law.

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